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EXAMINER				
WALERIC CHARLES				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/671,122

Applicant(s)

SCHOPP, JOEL HOWARD

Examiner

ERIC C. WAI

Art Unit

2195

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-20 are presented for examination. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of the action is withdrawn.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-6, 10-14, and 18-19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 4-6, 12-13, 15-17, 23-24, and 26-28 of copending Application No. 10/671,061.

4. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the present application and copending Application No. 10/671,061 describe methods for setting a thread state to a spin or sleep state based on criteria, when accessing a held mutex. It would have been obvious to one of ordinary skill that the spinning thread count value of the present Application is equivalent to the average acquisition cost value of copending Application No. 10/671,061.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 18-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

7. Claims 18-20 recite an "apparatus"; however, it appears that the system would reasonably be interpreted by one of ordinary skill in the art as software, per se, failing to be tangibly embodied or include any recited hardware as part of the system. Software is an equivalent means of the apparatus as claimed. Applicant is advised to include a processor and memory as part of the apparatus in order to overcome this 101 rejection.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-2, 10-11, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Limoges et al. (US Pat No. 6,976,107).

10. Regarding claim 1, Limoges teaches a method for managing a resource in a data processing system (abstract), the method comprising:

maintaining a spinning agent count value for a number of agents that are spinning on a resource (col 3 line 34);

attempting to acquire the resource by a first agent (col 3 lines 28); and

in response to a determination that the resource has already been acquired by a second agent, entering a spin state or a sleep state on the first agent (col 3 lines 33-40).

11. Limoges differs from the claimed invention by teaching agents instead of threads and resources instead of mutexes.

12. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Limoges to include threads and mutexes. Limoges teaches using process identifiers for each agent (col 3 lines 21-24). Furthermore, it is old and well known in the art to utilize mutexes to secure resources.

13. Regarding claim 2, Limoges teaches:

entering a spin state if the spinning thread count value satisfies a first condition (col 4 lines 15-30); and

entering a sleep state if the spinning thread count value satisfies a second condition (col 4 lines 15-30).

14. Regarding claim 3, Limoges teaches that the first condition is that the spinning thread count value is less than a spinning thread count threshold value ().

15. Regarding claims 10-11, they are the computer program product claims of claims 1-2 above. Therefore, they are rejected for the same reasons as claims 1-2 above.

16. Regarding claim 18, it is the apparatus claim of claim 1 above. Therefore, it is rejected for the same reasons as claim 1 above.

17. Claims 3-5, 12-14, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Limoges et al. (US Pat No. 6,976,107) in view of Gillespie (US Pat No. 6,269,391).

18. Regarding claims 3-5, Limoges does not teach a spinning thread count threshold value. It is well known in the art to use threshold values for determining different courses of action to take when the threshold is reached as indicated by Gillespie (col 9 lines 7-15, wherein an processor is deemed overloaded if its loading data is above some threshold, and wherein the processor will then shed threads to another processor).

19. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a spinning count threshold value. One would be motivated by the desire to determine whether an acquiring thread should be directed to spin or sleep.

20. Regarding claims 12-14, they are the computer program product claims of claims 3-5 above. Therefore, they are rejected for the same reasons as claims 3-5 above.

21. Regarding claim 19, it is the apparatus claim of claims 2-4 above. Therefore, it is rejected for the same reasons as claims 2-4 above.

22. Claims 6-9, 15-17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Limoges et al. (US Pat No. 6,976,107) and Gillespie (US Pat No. 6,269,391), further in view of Satyavolu et al. (US Pat No. 6,517,587 hereinafter Satyavolu).

23. Regarding claim 6, Limoges and Gillespie do not teach adjusting the spinning thread count threshold value based on an amount of time that is required by a thread to acquire the mutex after sleeping on the mutex.

24. Satyavolu teaches a system in which a queue with an adjustable threshold is used to affect latency of the server (col 3 lines 1-12 and 49-58).

25. It would have been obvious to one of ordinary skill in the art at the time of the invention to include adjusting the threshold value in order to affect the latency (time to acquire the resource) of the system.

26. Regarding claim 7, Satyavolu does not teach adjusting the spinning thread count threshold value based on a number of acquisition attempts that is required by a thread to acquire the mutex after sleeping on the mutex.

27. It would have been obvious to one of ordinary skill in the art that the number of acquisition attempts is equivalent to a latency of the system. Therefore, it would have been obvious to one of ordinary skill to include adjusting the spinning thread count threshold value based on the number of acquisition attempts. One would have been motivated by the desire to quickly estimate the latency of the system when determining whether to spin or sleep.

28. Regarding claims 8-9, Satyavolu teaches decreasing the spinning thread count threshold value if a thread acquires the mutex relatively slowly after sleeping on the mutex and increasing the spinning thread count threshold value if a thread acquires the

mutex relatively quickly after sleeping on the mutex (col 3 lines 1-12 and 49-58, wherein the threshold is decreased if the latency is too high and vice versa).

29. Regarding claims 15-17, they are the computer program product claims of claims 7-9 above. Therefore, they are rejected for the same reasons as claims 7-9 above.

30. Regarding claim 20, it is the apparatus claim of claims 5 and 7 above. Therefore, it is rejected for the same reasons as claims 5 and 7 above.

Response to Arguments

31. Applicant's arguments with respect to claims 1, 10, and 18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

32. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric C. Wai whose telephone number is 571-270-1012. The examiner can normally be reached on Mon-Thurs, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng - Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Meng-Ai An/
Supervisory Patent Examiner, Art Unit 2195

/Eric C Wai/
Examiner, Art Unit 2195